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FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

2020 AUG 21 PM 3:05

MARGARET BOTKINS, CLERK  
CASPER

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

JENNIFER L. ANDERSON,

Plaintiffs,

vs.

BROTHERS PYROTECHNICS INC., a Chinese  
Corporation; CODY J. KROMREY; and EARL W.  
LEARNED d/b/a ATLANTIS FIREWORKS,

Defendants.

Civil No. *20cv159-J*

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**DEFENDANT'S PETITION  
AND NOTICE OF REMOVAL**

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Defendant Earl W. Learned d/b/a/ Atlantis Fireworks, pursuant to Federal Rule of Civil Procedure 81(c), U.S.D.C.L.R. 81.1, and 28 U.S.C. §§ 1441 and 1446, hereby petitions this Court to remove the civil action filed by Plaintiff as Civil No. 29841 the District Court, Fifth Judicial District, Park County, Wyoming to the United States District Court for the District of Wyoming. In support of this Petition, the Defendant states as follows:

1. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1332(a) because the action is between citizens of different States with a subject of a foreign state that is an additional party, and the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interests and costs.

2. The subject state court action is removable pursuant to 28 USC § 1441(a).

3. On July 1, 2020 Plaintiff Jennifer Smith filed the subject state court action against Defendants Brothers Pyrotechnics Inc., Cody J. Kromley, and Earl Learned d/b/a/ Atlantis Fireworks in the Fifth Judicial District Court, Park County, Wyoming. *See* Exhibit 1: “Complaint”. The Complaint and Summons were served on Earl Learned on July 23, 2020. *See* Exhibit 2: “Affidavit of Service” on Earl W. Learned.

4. In their Complaint, the Plaintiff alleges she was injured by a firework commonly known as the “Irish Legend” during a house gathering July 4, 2016. She has brought the instant lawsuit against Brother Pyrotechnics Inc. - a Chinese Corporation that allegedly manufactured the firework, Earl W. Learned d/b/a Atlantis Fireworks – whom allegedly sold the firework, and Cody J. Kromrey – the owner of the home where the gathering took place. *See* Exhibit 1: “Complaint” at ¶¶ 7-13. She has pled strict liability and negligence causes of action. *Id.* at ¶¶ 14-35.

5. In their Complaint, Plaintiff alleges she is a resident of South Dakota, Brothers Pyrotechnics is a Chinese Corporation, Cody J. Kromrey is a resident of Park County, Wyoming, and Defendant Earl Learned is a resident of Park County, Wyoming. *Id.* at ¶¶ 2-4.

6. This Petition and Notice of Removal is filed within thirty days of receipt of the summons upon this Defendant, in accordance with 28 U.S.C. § 1446(b).

7. As required by 28 USC § 1446(d) and Rule 81.1 U.S.D.C.L.R., Defendant Earl W. Learned d/b/a Atlantis Fireworks is simultaneously filing a copy of this Petition and Notice of Removal with the Clerk of the District Court, Fifth Judicial District, Park County, Wyoming and all parties of record.

8. Defendant submits herewith the filing fee of \$400.00.

WHEREFORE, Defendant prays that the Court enter an Order of Removal.

DATED this 21st day of August, 2020.



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*Attorney for Defendant Earl W. Learned  
d/b/a Atlantis Fireworks*

**CERTIFICATE OF SERVICE**

This is to certify the foregoing **Defendant's Petition and Notice of Removal** was served this 21<sup>st</sup> day of August, 2020 by email and U.S. Mail, postage prepaid, to the following:

Colin M. Simpson  
Larry B. Jones  
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Andrew F. Sears

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ATTORNEYS FOR PLAINTIFF

PATRA LINDENTHAL  
Clerk of District Court

FILED JUL 01 2020  
  
Clerk

STATE OF WYOMING )  
 ) SS:  
COUNTY OF PARK )

IN THE DISTRICT COURT  
FIFTH JUDICIAL DISTRICT

Civil No. **29841**

JENNIFER L. ANDERSON, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BROTHERS PYROTECHNICS )  
INC., a Chinese corporation; )  
CODY. J. KROMREY; and )  
EARL W. LEARNED d/b/a )  
ATLANTIS FIREWORKS, )  
 )  
Defendants. )

### COMPLAINT

COMES NOW Plaintiff Jennifer L. Anderson, by and through her attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., and for her Complaint against the Defendants, hereby states, avers and alleges as follows:

#### Parties to the Action

1. Plaintiff Jennifer L. Anderson is a resident of South Dakota.
2. Defendant Brothers Pyrotechnics, Inc., upon information and belief, is a corporation and/or other business entity and/or a fictitious name for a corporation and/or other



business entity organized and existing pursuant to the laws of the People's Republic of China and is engaged in the business of manufacturing, distribution and sale of fireworks.

3. Defendant Cody J. Kromrey is a resident of Park County, Wyoming.

4. Defendant Earl W. Learned is, upon information and belief, a resident of Park County, Wyoming and was conducting business under the name of Atlantis Fireworks.

### **Jurisdiction and Venue**

5. Plaintiff's claims against the Defendants exceed the amounts necessary to confer exclusive jurisdiction in this Court under the provisions of Article 5, § 10, Wyoming Constitution and W.S. § 5-9-128(a)(2019).

6. Venue as to the Defendants is proper in this County under the provisions of W.S. § 1-5-105(2003).

### **Facts Common To All Counts of the Complaint**

7. On the evening of July 3, 2016, Defendant Cody J. Kromrey held a 4<sup>th</sup> of July party at his home at 772 Cactus Road, Powell, Wyoming, which festivities included setting off various fireworks.

8. Plaintiff Jennifer L. Anderson was one of the attendees at the gathering at 772 Cactus Road.

9. During the evening, Defendant Kromrey set up a cake firework by the name of "Irish Legend". The firework had been purchased the day before from Defendant Earl W. Learned's firework outlet located at Blair's Market in Powell, Wyoming and was manufactured by Defendant Brothers Pyrotechnic, Inc.

10. Defendant Kromrey placed the 'Irish Legend' on two cinder blocks laid side-

by-side some distance from where Plaintiff Jennifer L. Anderson and others present were gathered to view the fireworks.

11. Defendant Kromrey lit the 'Irish Legend' and moved away from it.

12. The 'Irish Legend' sent one round sideways on a non-vertical trajectory towards the group of individuals which included Plaintiff Jennifer L. Anderson, tipped over and fired additional rounds towards the Plaintiff and the gathering on the patio.

13. Plaintiff Jennifer L. Anderson was struck by one of the rounds fired by the 'Irish Legend' in the face and left eye, fell over backwards, striking her head on the concrete and losing consciousness. She immediately sought treatment for her injuries and continues to suffer the consequences of those injuries.

#### **COUNT I**

##### **Strict Liability - Defendants Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc.**

14. Plaintiff realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

15. Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. designed, manufactured, marketed, sold and distributed the 'Irish Legend' firework.

16. At all times relevant hereto, Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. were engaged in the business of designing, fabricating, manufacturing, testing, marketing, selling and distributing fireworks of the same nature as the 'Irish Legend.'

17. At the time Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. designed, manufactured, tested, sold, distributed and/or placed the subject 'Irish Legend' into the stream of commerce, it was in a defective and unreasonably dangerous condition.

18. The subject 'Irish Legend' was at all times expected by Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. to reach, and it did in fact reach, the ultimate user and/or consumer without a substantial change in the condition in which it was designed, manufactured, sold distributed, and/or supplied.

19. The defective and dangerous condition of the subject 'Irish Legend' was unknowable and unacceptable to the average or ordinary consumer and was in such a condition that normal use was dangerous beyond the contemplation of a reasonable consumer.

20. The risks presented by the defective and dangerous design and condition of the subject 'Irish Legend' outweighed the utility of its design and condition, such that a reasonable person would conclude that the probability and seriousness of harm arising from the product's design and condition outweighed the burden or cost of taking precautions.

21. The defective and dangerous design, manufacture and distribution of the subject 'Irish Legend' resulted in a product that was unsafe for its intended and foreseeable use, including the intended and foreseeable use of the product in this instance.

22. By designing, manufacturing, distributing, selling and/or supplying the 'Irish Legend' in a defective and unreasonably dangerous condition, and the failure to provide the 'Irish Legend' with adequate instructions, Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. are strictly liable pursuant to § 402A



of the Restatement (Second) of Torts.

23. As a direct and proximate result of the defective and dangerous design and/or manufacture of the subject 'Irish Legend' and the failure to provide the subject 'Irish Legend' with warnings and instructions that were adequate to prevent misuse by a lay person, Plaintiff Jennifer L. Anderson suffered the injuries, damages and losses described herein.

## **COUNT II**

### **Negligence - Defendants Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc.**

24. Plaintiff realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

25. At all times relevant hereto, Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. owed a duty to Plaintiff Jennifer L. Anderson to provide a product that was free from defective and dangerous conditions, free from defects in function and performance and safe for its reasonably foreseeable and/or intended use.

26. Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. breached their duty to Plaintiff Jennifer L. Anderson in the manner described herein.

27. The injuries, damages, and losses sustained by Plaintiff Jennifer L. Anderson were caused by the negligence and carelessness of Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. in the following respects:

- a. Failing to provide a reasonably safe product;



- b. Failing to properly design the product;
- c. Failing to properly test and/or inspect the product;
- d. Failing to properly manufacture the product;
- e. Failing to properly evaluate the product;
- f. Failing to provide warnings and/or instructions that were adequate to prevent misuse by a lay person;
- g. Failing to warn purchasers and users of the product's inadequate, defective and unsafe design, function and performance.
- h. Failing to provide the product with all the elements necessary to make it safe for its intended and foreseeable uses;
- I. Failing to design, test, evaluate, and manufacture the product in accordance with recommended and accepted standards applicable to similar products;
- j. Failing to design, test, evaluate, and manufacture the product that was free of defects in function and performance in accordance with recommended and accepted standards applicable to similar products;
- k. Disregarding the available information demonstrating that the design/manufacture of the product created an unacceptable risk of catastrophic injury and/or death to users of the product; and
- l. Failing to comply with applicable industry standards including, but not limited to those published by the American Fireworks Standards Laboratory.

28. As a direct and proximate result of the conduct of Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc., Plaintiff Jennifer L.

Anderson suffered the injuries, damages, and losses described herein.

29. Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. knew, or by using reasonable care, would have discovered or should have discovered, the conditions that injured Plaintiff, and should have realized that the conditions involved a foreseeable and unreasonable risk of harm to Plaintiff.

30. The accident and the injuries, damages and losses suffered by Plaintiff were caused without any negligence on the part of Plaintiff.

31. Defendant Earl W. Learned, d/b/a Atlantis Fireworks and Defendant Brothers Pyrotechnics, Inc. are vicariously liable for the actions of their agents and/or employees who at all times relevant hereto, were acting in the course and scope of their employment or agency.

**COUNT III**  
**Negligence of Defendant Cody J. Kromrey**

32. Plaintiff realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

33. Defendant Cody J. Kromrey was negligent in igniting the 'Irish Legend' firework, and such negligence was a direct and proximate cause of Plaintiff's injuries.

34. Defendant Cody J. Kromrey's negligence included, but is not limited to:

- a. Failing to provide an adequate base for displaying and igniting the 'Irish Legend' firework;
- b. Placing the 'Irish Legend' firework in a location which was unreasonably dangerous for his guests;

c. Permitting his guests to locate themselves in an area which put them within range of being struck by a firework; and

d. Was otherwise negligent.

35. As a direct and proximate cause of the negligent actions of Defendant Cody J. Kromrey, Plaintiff Jennifer L. Anderson suffered the personal injuries and damages otherwise described herein.

### **INJURIES AND DAMAGES**

36. Plaintiff realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

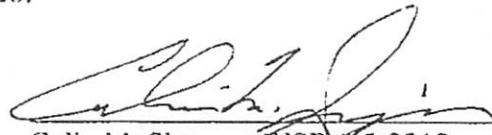
37. As a direct and proximate result of the conduct of Defendants and the defective and unreasonably dangerous design, function, performance, condition and use of the 'Irish Legend', Plaintiff Jennifer L. Anderson suffered:

- a. Serious, permanent and extensive injuries to her left eye requiring surgery;
- b. Cervical issues including neck pain, right shoulder pain, headaches and numbness and tingling in her face;
- c. Acute Stress Disorder/PTSD;
- d. Physical and emotional pain and suffering;
- e. Substantial medical treatment and expenses, past and future;
- f. Loss of enjoyment of life;
- g. Loss of earnings; and
- h. Other pecuniary losses and expenses.

**WHEREFORE** Plaintiff Jennifer L. Anderson respectfully requests that the Court enter judgment against the Defendants, individually and collectively, as follows, as appropriate to each cause of action alleged, damages for:

1. Past, present and future, temporary and permanent pain, suffering, disfigurement, scarring, nervous shock, emotional distress, embarrassment, and loss of enjoyment of life;
2. Past, present and future, temporary and permanent loss of physical functioning;
3. Past, present and future, temporary and permanent loss of earnings and damages for impaired earning capacity;
4. Medical expenses, past, present and future, according to proof at the time of trial;
5. Other pecuniary losses arising out of the injuries suffered by Plaintiff Jennifer L. Anderson in an amount to be proven at trial;
6. For costs of suit incurred herein and applicable interest thereon;
7. For pre-judgment and post-judgment interest as provided by law; and
8. For such other and further relief as the Court may deem just and proper.

DATED this 1st day of July, 2020.



Colin M. Simpson WSB # 5-2312  
Larry B. Jones, WSB # 5-1847  
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*ATTORNEYS FOR PLAINTIFF*

STATE OF WYOMING )  
 ) SS:  
 COUNTY OF PARK )

IN THE DISTRICT COURT  
 FIFTH JUDICIAL DISTRICT

JENNIFER L. ANDERSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 BROTHERS PYROTECHNICS )  
 INC., a Chinese corporation; )  
 CODY. J. KROMREY; and )  
 EARL W. LEARNED d/b/a )  
 ATLANTIS FIREWORKS, )  
 )  
 Defendants. )

Civil No.: 29841

PATRA LINDENTHAL  
 Clerk of District Court

FILED JUL 24 2020

by Debra C. Smith  
 Deputy

**AFFIDAVIT OF SERVICE**

STATE OF WYOMING )  
 ) ss.  
 COUNTY OF PARK )

Sheila Orr, being first duly sworn on oath, deposes and says that he/she is over the age of 21 years and is not a party to the foregoing action or interested therein, and that she made service of said Summons in the County aforesaid on the 23<sup>rd</sup> day of July, 2020, at 5:08 p.m., by delivering a copy of the same, together with a copy of the Complaint, to: Earl W. Learned, individually and as the owner of the dba Atlantis Fireworks, at his usual residence located at 580 Rancho Trail, Powell, WY 82435.

Sheila Orr  
 Sheila Orr

Subscribed and sworn to before me by Sheila Orr, this 24<sup>th</sup> day of July, 2020.



[Signature]  
 Notary Public

My commission expires: \_\_\_\_\_